

**Office of Administrative Hearings
Special Education Advisory Committee
October 14, 2011 Meeting Summary**

1. *Selection of Chairs and Note-takers:* Kent Rezowalli was selected to chair the Northern California section of the meeting, and Robert Wright was selected to chair the Southern California section. Catherine Sherman (Northern California) and Miho Murai (Southern California) were designated as the note-takers. The meeting was conducted via video conference and was also available as a live webcast.
2. *Roll Call:* Advisory Committee members Paul Eisenberg, Sundee Johnson, Ann Delfosse, Thomas Gibson, and Christine Smith were not present. All other members were present. Members and OAH staff were introduced.
3. *Introductory Comments:* Special Education Division Presiding Administrative Law Judge (DPALJ) Judith Kopec reviewed the meeting's format. She will present items placed on the agenda by the Office of Administrative Hearings (OAH) and the Committee member will present items the member proposed. The members will discuss each item. After the members have finished their discussion, the public may comment and public emails will be read. Members may propose recommendations, which, if seconded, will be discussed and voted on. Recommendations may be revised if agreed upon by the member proposing the original recommendation. The committee is not required to follow Robert's Rules of Order.
4. *Open Meeting Act:* DPALJ Kopec provided a brief overview of the Bagley-Keene Open Meeting Act. Before the meeting, members were provided copies of *A Handy Guide to the Bagley-Keene Open Meeting Act 2004*, from the California Attorney General's Office and were encouraged to become familiar with it. Each member is responsible for ensuring he or she complies with the Act. Members were informed of the prohibition against serial meetings under Government Code section 11122.5, subdivision (b).
5. *Terms of Advisory Committee Members:* Each member serves for two years. This is the beginning of a two-year term for members who were just appointed and the beginning of the final term for members who continued from last year. Continuing members who wish to remain on the Committee will need to reapply in Spring 2012.
5. *Staff Changes:* Bob Varma was appointed the PALJ for the Sacramento special education office and Richard Breen was appointed the PALJ for the Van Nuys special education office. Jennifer Haley is serving as the lead special education calendar clerk and Cheryl Hill is the manager for the special education calendar staff.
6. *Initial Scheduling Order Protocols:* DPALJ Kopec discussed the current protocols for scheduling initial mediation, prehearing conference (PHC) and due process hearing (DPH) dates when matters are filed. She presented a proposal to move up some of the dates consistent with the legal mandate to resolve matters expeditiously. Below is a summary of the proposal:

	Mediation-Only		Student-Filed DPH Only		District-Filed DPH Only		Student-Filed Mediation & DPH		District-Filed Mediation & DPH		Expedited DPH	
	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed
Mediation	Filing + 15	Filing + 10	Not applicable	Not applicable	Not applicable	Not applicable	Filing + 35	Filing + 32	Filing + 15	Filing + 10	Filing + 10 business days	Filing + 10
PHC	Not applicable	Not applicable	Filing + 35	Filing + 32	Filing + 15	Filing + 10	DPH - 5	No change	DPH - 5	No change	DPH - 5	No change
DPH	Not applicable	Not applicable	PHC + 1 week	No change	PHC + 1 week	No change	Filing + 55	Filing + 45	Filing + 25	Filing + 15	+ 20 school days	No change

Several members expressed concern that shortening time frames for district-filed matters would not provide parents significant time to prepare for the PHC and to obtain legal representation. Others supported the view that quick resolution of these matters is beneficial to all the parties.

Committee Recommendation: A recommendation was proposed and seconded that the initial scheduling protocols not change for district-filed hearing-only and district-filed mediation and hearing matters. The recommendation passed in Northern and Southern California.

Committee Recommendation: A recommendation was proposed and seconded that the initial scheduling protocols not be changed. The recommendation passed in Southern California and did not pass in Northern California.

7. *Initial Continuance Protocol:* DPALJ Kopec explained OAH's current policy that when there is an agreed-upon initial request for continuance, the new dates must be within 90 days of the initial hearing date. It is common that continuances are requested for the full 90 days, which can make it difficult to manage the calendar because cases are merely delayed 90 days. OAH is proposing that the maximum length of an initial continuance be shortened to 60 days.

Several members commented that the time period for stipulated continuances should be lengthened instead of shortened. Several reasons were offered: when parties agree to a lengthy continuance, they are usually working on something that will benefit the child; and it is difficult to retain counsel and be prepared for hearing within 90 days. In support of shortening the time period for a continuance, a member acknowledged that having a deadline can often motivate parties to resolve the matter.

Committee Recommendation: A recommendation was made and seconded that the maximum period for a stipulated initial continuance be lengthened to 120 days and the maximum period for an unstipulated initial continuance be shortened to 60 days. This recommendation was later withdrawn and no vote was taken.

Committee Vote on OAH's Proposal: OAH's recommendation passed in Northern California and did not pass in Southern California. DPALJ Kopec incorrectly noted during the meeting that the recommendation did not pass in Northern California. After reviewing the transcript of the meeting and notes of the meeting, it was discovered that the Northern California section supported OAH's proposal.

8. *Conducting Hearing on Initial Hearing Date:* This item was presented by Member Peggy Broussard. She expressed concern that if a party wishes to proceed to hearing at the initial hearing date, the party is at a disadvantage because only one date is initially scheduled. Member Broussard stated there should be a way for the parties to get additional hearing days added to the initial day so that a hearing can go forward when it was initially scheduled. DPALJ Kopec explained that OAH's current policy is that if no continuance has been granted, a hearing will go forward on the initial hearing date and continue until the hearing is finished. She acknowledged that some administrative law judges have not been correctly articulating the policy during PHC's.

Member Recommendation: Two weeks or less prior to the initial hearing date, a party may request additional hearing days from OAH and the other party will have three business days to respond to the request. This recommendation was not seconded, and no vote was taken.

9. *Impact of Continuance on Decision Timeline:* This item was presented by Member Broussard. DPALJ Kopec explained OAH's current policy is that the date a continuance is granted stops the decision time line, which restarts on the first day of the hearing. Member Broussard expressed concern that this policy delays the decision and only benefits the administrative law judge who has additional time to write a decision. Several members stated that if this change resulted in more decisions being untimely, then perhaps this might help OAH get approval to hire more administrative law judges.

Member Recommendation: Member Broussard recommended, and it was seconded, that if a continuance is granted at any time prior to the initial hearing date, the judge would have the same number of days to write the decision that the judge would have had if there had not had been a continuance. The recommendation passed in Northern California and did not pass in Southern California.

10. *OAH Calendar Conflicts and Good Cause for Continuances:* DPALJ Kopec explained that parties regularly seek continuances when they are scheduled for more than one hearing that start on different days during the same week. For example, one hearing may be scheduled for Tuesday and Wednesday and another hearing is scheduled for Wednesday and Thursday. A continuance is often requested for the second hearing well in advance of both hearings. Since 97 percent of cases are resolved without hearing, it is likely that as the hearing dates grow near, the scheduling conflict will resolve itself as one or both matters settle. This results in hearings being pushed unnecessarily into the future. OAH proposed that when a party has a conflict with two hearings scheduled during the week, the hearing that begins first will take priority. As a result, a calendar conflict by itself would not provide good cause for a continuance that is requested well in advance of the scheduled hearing dates.

Concern was expressed about the lack of certainty about whether hearings were going to go forward and the difficulty preparing for a hearing that may or may not proceed. It was suggested that the circumstances of each case should be considered because a hearing scheduled to begin later may actually be a greater priority in order to get services to a child.

Committee Vote on OAH's Recommendation: The recommendation did not pass in either Northern or Southern California.

Committee Recommendation: A recommendation was made and seconded that OAH calendar a hearing for the number of days requested by the party that filed the complaint. The recommendation passed in Southern California and did not pass in Northern California.

11. *Paperless Pilot Project:* DPALJ Kopec explained that the Special Education Division has begun a six-month pilot project to create paper files only if a matter goes to hearing. All confidential mediation or settlement documents will be scanned into OAH's case management system and protected with a password unknown to the administrative law judges.

12. *Timely Peremptory Challenges:* DPALJ Kopec summarized the current provisions governing peremptory challenges found in California Code of Regulations, title 1, section 1034. A peremptory challenge must be made at the beginning of a PHC. The memorandum of understanding with the California Department of Education provides that if OAH reassigns the hearing to another administrative law judge for a reason other than as a result of a peremptory challenge, then a peremptory challenge shall be made no later than noon the business day prior to the first day of hearing. Because the meeting was running long and members had other commitments, this item will be placed on the agenda for the next meeting.

13. *Public Comment:* Member Bob Wright commented that there needs to be a way to have more members on the Committee to make sure that a quorum is present. He commented that parents are supposed to be a majority of the Committee; he tried to recruit some parents to apply to be on the Committee, but they either did not apply or were not selected.

14. *Tentative Date of Next Meeting:* The tentative date for the next meeting is Thursday, April 12, 2012.

Meeting was adjourned.